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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/930,913	08/15/2001	William J. Braun	24534-080000	1702

7590 04/27/2007
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EXAMINER

DASS, HARISH T

ART UNIT	PAPER NUMBER
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3693

MAIL DATE	DELIVERY MODE
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04/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/930,913	Applicant(s) BRAUN ET AL.	
	Examiner Harish T. Dass	Art Unit 3693	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 02 April 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): USC 112 2nd paragraph.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: As stated in prior office action paper number 20061120.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.

Harish T. Dass

Continuation of 13. Other: Response to Arguments

In response to applicant's argument with respect to rejection under 35 USC § 112, the rejection is reviewed with respect to the specification page 14 line 24, page 19 line 25. Rejection under 35 USC § 112 of previous office action is removed.

Applicant's arguments filed have been fully considered but they are not persuasive.

In response to applicant argument (recited page 3 of remark) ", the resultant combination lacks critical features positively recited in the amended claims. Applicants respectfully reiterate that ... evaluating real estate financing structures in ... refinancing of real estate asset ..." Applicants argue about limitation that is not claimed. However, the claimed limitation "evaluating the indicator values for non-financial data with respect to the plurality of financing structures to get a total score for each indicator with the computer is disclosed by Apgar (see previous office action page 3) and secondary reference, Franks, disclose providing a plurality of financing structures (lease vs. buy), and evaluating the indicator values for the financial data (lease payment, interest, tax factors, cash flow, optimizing lease payment) with respect to the plurality of financing structures (see entire document 13 page or at least see the underlines), and the motivation to do is "to provide analytic analysis and tools for plurality of financing structures (lease vs. purchase) and impact of tax rate; interest rate to borrow, etc. on lease vs. purchase" (see page previous office action page 4). Further, evaluating financial data and non-financial data for deciding to lease or buy is known, as an example, even a real estate agent who helps customer for buying a house/renting knows that customer has an expectation of buying/renting a property based factors such as: financial consideration, school, neighborhood, distance from work, noise, down payment, mortgage, number of rooms, affordability, etc. For example, one customer may consider school and neighborhood important and is willing to pay extra, while a second customer may see neighborhood and quietness more important, while another will evaluate monthly payment, etc. These are not disparate combination but real experiences. Similarly, commercial property considers "financial" and "non-financial" factors, for example, USPTO buildings at Crystal City and Alexandria Virginia were leased not purchased based on the government (GAO) determination of it is beneficial to lease for long term than build or purchase a property. For example, a business may see leasing may be more valuable because, financing interest are higher and the present value does not justify buying, the lease cost is tax deductible, money for down-payment can be used for developing business instead of owning property, borrowing buy issuing bonds, etc.

In response to applicant's argument (recited on page 3) "Apgar IV fails to teach or even remotely suggest a method or system for evaluating real estate financing structures to determine the best or optimal way to procure the real estate." Applicants argue about limitation that is not claimed, see claim limitation which reads "evaluating the indicator value ..."

In response to applicant's argument (recited on page 4 of remarks) that "Frank provides no teaching or disclosure relating to evaluating real estate financing structure." Applicants argue about limitation that is not claimed. See page 4 of previous office action which reads "Franks disclose providing a plurality of financing structures (lease vs. buy), and evaluating the indicator values for the financial data (lease payment, interest, tax factors, cash flow, optimizing lease payment).

In response to applicant's argument (recited in page 6) 'nothing in Ruffin et al. relates to real estate ...' Ruffin is another secondary reference, primary reference discloses the elements which applicant is talking about.

In response to applicant's argument (recited in page 6) that Ruffin is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case Ruffin discloses a business solution for by analysis of the requirement and assessment tools which uses ranking, weighing factors and total score (see at least col. 3 line 35 to col. 4 line 67; Figure 9 (# 901-903); col. 16 lines 12-29).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971) and In re Gorman, 933 F.2d 982, 18 USPQ2d 1885 (Fed. Cir. 1991). As it is stated above, real estate purchase/lease and considering factors are known to one ordinary skill in the art, therefore buying/leasing is not an hindsight. Applicant does not introduce for example a new way of financing which is unique and no one else knows about it as it is shown by prior arts.

Manish T Dan